

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**RIN 3133-AD33**

**Member Inspection of Credit Union Books, Records, and Minutes**

**AGENCY:** National Credit Union Administration.

**ACTION:** Proposed Rule.

**SUMMARY:** The National Credit Union Administration (NCUA) is issuing a proposed rule on member inspection of federal credit union (FCU) books, records, and minutes. The rule provides that a group of members representing approximately one percent of the membership, with a proper purpose and upon petition, may inspect and copy the nonconfidential portions of the credit union's books, records, and minutes. This proposal standardizes and clarifies existing member inspection rights.

**DATES:** Comments must be received on or before June 22, 2007.

**ADDRESSES:** You may submit comments by any of the following methods  
(Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:  
[http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on Proposed Rule 701.3" in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Paul Peterson or Annette Tapia, Staff Attorneys, at the above address or telephone number (703) 518-6540.

## SUPPLEMENTARY INFORMATION

### **A. Background.**

This proposed rule provides that a group of members representing approximately one percent of an FCU's membership, upon petition and with a proper purpose, may obtain access to the nonconfidential portions of the FCU's books, records, and minutes.

FCUs are not-for-profit, member-owned cooperatives organized to provide financial services and products to their members. The financial interests of members in their credit union are similar to the financial interests shareholders have in for-profit corporations. Corporate shareholders have various methods to protect their financial interests in the corporation, including the right at common law and in various state statutes to inspect corporate books and records. Because of the similarity of interests between credit union members and corporate shareholders, NCUA legal opinions going back many years have stated that FCU members may inspect the FCU's books and records under the same terms and conditions that state corporation law where the FCU is located permits shareholder inspection of corporate records. See, e.g., OGC Ops. 92-0101, 96-0451, and 06-0127B. These opinion letters are available at [www.ncua.gov](http://www.ncua.gov).

The NCUA Board believes regulating member inspection of FCU records is preferable to reliance on state corporation law. Corporation law on shareholder inspection, for example, varies from state to state, and FCUs should have a consistent standard regardless of an FCU's location. Some FCUs have branches in multiple states, further complicating the application of state law to inspection requests. In addition, some courts may refuse to apply their corporation law to inspection requests by FCU members or may incorrectly analogize the financial interests of credit union members to those of depositors in a mutual savings bank and deny members inspection on those grounds. See, e.g., *Save Columbia Credit Union Committee v. Columbia Credit Union*, 139 P.3d 386, 393-95 (Wash. App. 2006)(refusing to apply state corporation law to records inspection request by members of a state-chartered credit union).

The Board considered when and why members might want to inspect FCU records. The law charges members with responsibility for important decisions that affect both the FCU and the members' financial interests. For example, a vote of the FCU's members is required on the election and removal of directors, mergers, conversion from federal to private account insurance, conversion from a federal to state charter or conversion to a mutual savings bank, and voluntary liquidations. In these situations, members may want to inspect FCU records to better inform themselves before voting and to ensure that directors are acting in

the best interests of the members. There are other situations where the members want to inspect records to protect their financial interests, as discussed further below.

The Board also considered how stakeholders of depository institutions other than credit unions may inspect their institution's books and records. The Board identified an existing Office of Thrift Supervision (OTS) rule governing the right of shareholders to inspect the books, records, and minutes of federal stock savings associations. 12 CFR 552.11 (OTS Rule). The ownership interests of members in an FCU are similar to the ownership interests of stockholders in a stock savings association; the issues on which FCU members and stock bank shareholders vote are similar; and the regulatory and supervisory powers of NCUA and OTS over their respective regulated institutions are also similar. Accordingly, this proposed rule tracks, in large part, the OTS Rule. The proposal is also consistent with existing NCUA guidance on member inspection of FCU records. See FCU Handbook (Rev. 2006), p.68.

## **B. Paragraph-by-Paragraph Analysis.**

### **(a) Member inspection rights.**

Proposed paragraph (a) establishes the right of a group of members of an FCU, upon submission of a proper petition, to inspect and copy the credit union's books and records of account and minutes of the proceedings of the credit union's members, board of directors, and committees of directors. This inspection right is similar to that in the OTS Rule, with the use of a member petition in lieu of the stockholder affidavit requirement in the OTS Rule.

The member petition must meet the requirements in proposed paragraph (b). Also, inspection rights are limited to the nonconfidential portions of the credit union's books, records, and minutes. Proposed paragraph (d) defines confidential books, records, and minutes; all other books, records, and minutes are nonconfidential.

### **Minutes.**

The Board intends the phrase "minutes of the proceedings at all meetings of its members, board of directors, and committees of directors" to include any summary or recording of the proceedings and all documents, reports, studies, and visual aids considered by the meeting participants. The Board believes this broad interpretation of minutes is appropriate. For example, in situations where an FCU membership vote is required, the vote is either about the election or removal of directors or officers or is precipitated by the actions of the directors as in the case of a merger or conversion. Members should have access to the

directors' deliberations to help members decide how to vote and help members determine if the directors are acting in the members' best interests.

*Books and records of account.*

Courts have interpreted the phrase "books and records of account" differently. Some courts have interpreted the phrase broadly to include both financial and nonfinancial records while other courts have interpreted the phrase to include only financial records. *See, e.g., Meyer v. Ford Industries, Inc.*, 538 P.2d 353, 358 (Or. 1975)(broad interpretation); *Corwin v. Abbott Laboratories*, 819 N.E.2d 1249 (Ill. App. 2004), *app. den.* 2005 Ill. LEXIS 609 (Ill. 2005)(phrase includes both financial and nonfinancial records); and *Jewelers International Showcase, Inc. v. Mandell*, 529 So. 2d 1211 (Fla. Dist. Ct App. 3d Dist. 1988)(stockholder was entitled to inspect financial records such as general ledger, balance sheets, and profit and loss statements).

The NCUA Board believes a narrow interpretation is best. The plain language meaning of "of account" supports a limitation to accounting records. Stockholder inspection of corporate records under the Model Business Corporation Act (MBCA) is expressly limited to minutes and "accounting records," and the Counsel to the Federal Home Loan Bank Board (FHLBB), in interpreting the predecessor to the OTS rule, has cited to the MBCA as authority for the OTS rule. Letter from Julie Williams, FHLBB Deputy General Counsel, dated September 17, 1986, located at 1986 FHLBB LEXIS 82 (*hereinafter* 1986 FHLBB DGC Letter); and Model Bus. Corp. Act §16.02(b)(2)(1984). The Board believes the financial interests of members are adequately protected by combining a broad interpretation of minutes with a more restrictive interpretation of the phrase books and records of account.

*Inspection and copying.*

Generally, a member's right to inspect FCU minutes and records includes the right to make copies of those records. Obtaining copies enables members to provide the information to other members or, in some cases, to experts for independent analysis and review. If an FCU believes that certain of its records should not be copied, it may request that the regional director impose conditions on the inspection, as discussed further below.

**(b) Petition for inspection.**

Proposed paragraph (b) establishes the member petition requirements.

The petition must describe the particular records to be inspected and state a purpose for the inspection related to the business of the credit union. The petition must state that the petitioners as a whole, or certain named petitioners, agree to pay the direct and reasonable costs associated with search and

duplication of requested material. The petition must also state that the inspection is not desired for any purpose in the interest of a business or object other than the business of the credit union; that the members signing the petition have not within five years preceding the signature date sold or offered for sale, and do not now intend to sell or offer for sale, any information obtained from the credit union; and that the members signing the petition have not within the past five years aided or abetted any other person in procuring any information from the credit union for purposes of sale. The petition must name one or more members who will represent the petitioners on issues such as inspection procedures, costs, and potential disputes. At least one percent of the credit union's members, with a minimum of 20 members and a maximum of 250 members, must sign the petition.

The language of this proposed paragraph is similar to language in paragraphs (b) and (c) of the OTS Rule.

Minimum signature requirement.

The OTS Rule requires stockholders seeking records to own a certain number of shares and to submit an affidavit describing their request to the savings association. For shareholders who have owned their shares at least six months, the affidavit generally must be signed by shareholders representing at least one percent of the outstanding shares. OTS Rule, paragraphs (b)(1) and (2). The proposal substitutes a member petition for this stockholder affidavit. The petition also employs a minimum signature requirement of one percent of the members, representing an ownership interest roughly equivalent to one percent of the shares of a stock association. The proposed rule further provides that a minimum of 20 members and a maximum of 250 must sign the petition. The one percent and minimum and maximum signature requirements are similar to those established in NCUA's standard FCU bylaws for members seeking a nomination by petition to run for election to an FCU's board of directors. NCUA Standard FCU Bylaws, Art. V, Sec. 1 (Rev. April 2006).

Proper purpose.

The purpose of an inspection must be related to the business of the credit union. A proper purpose includes attempting to ascertain and protect members' financial interests and to ascertain possible mismanagement. See, e.g., 1986 FHLBB DGC Letter (interpreting OTS Rule).

The issue of member inspection of records may arise, for example, in the context of a member vote on merger or charter conversion. Members of a merging or converting credit union may desire access to the due diligence performed by their directors, and other credit union books and records, to determine if the directors are acting in the members' best interests. Members of a credit union merging with another credit union may also have an interest in determining if they are

receiving an appropriate share adjustment. 12 CFR 708b.103(a)(5). Members may have a financial interest in ascertaining how the proposed merger or conversion will affect their services, rates, and fees and how the directors analyzed this issue. Members of a credit union merging with a bank may have a further interest in determining the value of their shares plus any associated premium and whether the directors carefully considered all the available merger opportunities with a view to maximizing the financial benefit to the members. Members of a credit union converting to a bank may also want to know if their directors considered the possibility of a merger and appropriate payments to members.

Members may wish to obtain FCU records in other contexts. For example, some members might want records about FCU decisions that have a direct effect on the members, such as a determination to close a branch office or to discontinue a service or product. Members electing directors might want records from the credit union about the qualifications of and benefits received by sitting directors. Members might also want records about the qualifications and compensation of senior management.

#### Burden of proof on proper purpose.

Generally, in the absence of evidence indicating an improper purpose, courts do not assume that stockholders of a corporation requesting an inspection intend to use the information improperly just because it would be possible for them to do so. Fears v. Cattlemen's Inv. Co., 483 P.2d 724, 730 (Okla. 1971). The requirement in the proposed rule that petitioners state they are not intending to sell the information, nor have they aided or abetted such sales in the past five years, helps ensure a proper purpose. The minimum signature requirement in the proposal also helps ensure a proper purpose because members seeking signatures will have to convince other members that they share a common and appropriate purpose. Accordingly, a petition meeting the requirements of paragraph (c) creates a presumption of proper purpose, and an FCU should have substantial evidence of improper purpose to deny inspection for that reason.

#### Description of records.

The petition must describe the particular records sought and the description must be specific enough to allow the FCU to identify responsive records. The FCU may ask the petitioners for more information if necessary to help understand the scope of the request.

### **(c) Inspection procedures.**

Proposed paragraph (b) provides the inspection procedures. Within 14 days of receipt of a petition, the FCU must either allow inspection and copying of all requested material or inform the petitioning members in writing why it is not able

to do so. Inspection may be in person or by an agent or attorney and at any reasonable time or times. Member inspection rights under this paragraph are in addition to any other member inspection rights afforded by law, regulation, or the credit union's bylaws.

Unless a regional director imposes conditions on a particular request for records, the member's right to inspect records includes the right to make copies. In many cases, the credit union will mail or deliver copies of the requested documents to the individual(s) designated by the petitioners. In some cases, however, the petitioners may request an inspection of requested documents at the credit union before copies are made or the credit union may ask the petitioners to come to the credit union to pick up the copies. The Board recognizes original documents may be at a credit union office some distance from where the petitioners live and that conducting an on-site inspection or pick-up may be difficult or expensive for petitioners. The Board expects credit unions and petitioners to work out reasonable, mutually acceptable arrangements for on-site inspection or pick-up, including, for example, movement of documents or copies to a credit union branch location convenient to petitioners.

The language of this paragraph is similar to language in paragraph (b) of the OTS Rule. The proposed 14-day compliance time frame, not found in the OTS Rule, will ensure that an FCU responds promptly to the member petition. The proposed paragraph also recognizes that members may have additional inspection rights, including, for example, inspection rights related to merger compensation in another pending NCUA rulemaking.

#### **(d) Confidential books, records, and minutes.**

Proposed paragraph (d) provides that members do not have the right to inspect portions of the books, records, or minutes of an FCU under certain circumstances: first, if federal law or regulation prohibits disclosure of that portion; second, if that portion contains nonpublic personal information; and, third, if that portion contains information about credit union employees or officials the release of which would constitute an unwarranted invasion of personal privacy.

##### **Federal law or regulation prohibits disclosure.**

The provision prohibits credit unions, for example, from disclosing nonpublic records generated by NCUA, including reports of inspection that might otherwise be considered by the FCU's board of directors and included within its meeting minutes. 12 CFR 792.40, 792.49.

##### **Nonpublic personal information.**

The members of a credit union are both its customers and its owners, and the credit union maintains sensitive personal and financial information about members that must be protected. The OTS Rule protects the privacy of a bank's customers by providing that no stockholder may inspect any list of depositors or borrowers or their addresses, deposit, or loan records or any data from which that information can be constructed. The proposed rule provides similar protection for the personal and financial information of a credit union's members, but instead of a reference to specific sensitive information as in the OTS Rule, the proposal will protect all nonpublic personal information as that term is defined in NCUA's rules on the privacy of consumer financial information. 12 CFR part 716. Nonpublic personal information includes information such as the fact an individual is a member, account numbers and balances, transaction information, consumer reports, and any information provided by the member to obtain a financial product from the credit union. 12 CFR 716(r). Information that is publicly available or information that does not identify a particular member would not be nonpublic personal information. 12 CFR 716(q).

*Information about credit union employees or officials.*

The proposed rule also protects from inspection information about the FCU's employees and officials if disclosure would constitute a clearly unwarranted invasion of personal privacy. This terminology is similar to the confidentiality provision in the Freedom of Information Act. 5 U.S.C. 552(b)(6). Some categories of information that will receive confidentiality treatment include marital status, financial status, children, medical conditions, dates of birth, religious affiliations, citizenship data, sexual inclinations, and social security numbers. See *Freedom of Information Act Guide and Privacy Act Overview*, U.S. Department of Justice (May 2004 ed.).

As an exception to this confidentiality provision, FCU members may inspect materials describing the compensation and benefits provided to senior executive officers. The member-owners of a credit union have a financial interest in how their credit union is managed, and that interest extends to knowledge about who the senior managers are, their qualifications, and their compensation levels. The members' interest in this information outweighs any privacy interests the senior managers may have in the information. Accordingly, the rule provides that members may inspect information about the qualifications, compensation and benefits of senior executive officers, as defined in §701.14 of NCUA's rules:

Senior executive officer means a credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager), and the chief financial officer (controller). The term "senior executive officer" also includes employees of an entity, such

as a consulting firm, hired to perform the functions of positions covered by the regulation.

12 CFR 701.14(b)(2).

Other considerations.

This proposal provides confidentiality only for materials the release of which is prohibited by federal law, materials that contain nonpublic personal information, and personal information about FCU employees and officials. In some states, courts have withheld other types of documents from shareholder inspection, such as confidential internal correspondence or materials containing corporate trade secrets. See, e.g., Morton v. Rodgers, 20 Ariz. App. 581, 514, P.2d 752 (Ariz. Div. 1, 1973)(trade secrets); State Ex. Rel. Armour & Co. v. Gulf Sulphur Corp., 231, A.2d 470 (Del. 1967)(trade secrets); and State ex rel. Jones v. Ralston Purina Co., 358 S.W.2d 772, 778 (Mo. 1962)(internal correspondence). As one court noted, however:

Both under the common law and under our statute a stockholder of a corporation is entitled to examine the books and records of the corporation . . . . The right rests upon the proposition that, while the corporation holds the legal title to its property, the stockholders are deemed to be the real and beneficial owners thereof and, as such, are entitled to information concerning the management of the property and business which they have confided to the officers and directors of the corporation as their agents . . . . It ordinarily is not enough to deny the right that the information sought is of a confidential nature.

Nationwide Corp. v. Northwestern National Life Insurance Co., 251 Minn. 255, 256; 87 N.W.2d 671, 672 (Minn. 1958).

This proposal, like the OTS Rule, has no confidentiality provisions related to internal memoranda or trade secrets for several reasons. First, credit unions do not generally have trade secrets, that is, secret formulas or technology on which the success of the organization is dependent, and cases that deal with confidential internal correspondence generally do not provide a standard by which confidentiality can be measured. Second, it is unlikely that, given the narrow interpretation of “books and records of account” intended by the Board, any materials deserving of confidentiality would appear among those materials subject to inspection. Third, even if confidential materials appear among the materials subject to this rule, requested materials must be relevant to the petitioners’ stated business purpose before they become subject to inspection. See, e.g., Azzar v. Primebank Federal Savings Bank, 499 N.W.2d 793, 798 (Ct. App. Mich. 1993)(interpreting the OTS Rule). Finally, and as discussed above, if

a credit union has substantial evidence of an improper purpose, it may deny inspection for that reason.

In the unlikely event there are portions of relevant FCU books and records of account or minutes the public release of which might cause the credit union substantial competitive injury or financial damage, the dispute resolution paragraph of the proposed rule permits the regional director to place conditions on member inspection that balance the interests of the member-owners in the requested information against any interests the credit union may have in maintaining confidentiality. The regional director's authority to resolve disputes is discussed further below.

The NCUA Board also considered if privileged information, that is, exempt from discovery in court cases, should be withheld from members. Case law on the corporate shareholder's right to inspect privileged information differs by jurisdiction. In California, for example, shareholders lack the right to inspect corporate books and records covered by the attorney-client privilege. National Football League Properties, Inc. v. Oakland Raiders, 75 Cal. Rptr. 2d 893 (Ca. Ct. App. 6<sup>th</sup> District 1998). In other jurisdictions, however, shareholders who are concerned with corporate mismanagement may inspect attorney-client privileged documents. Beard v. Ames, 168 A2d 119 (N.Y. 1983); Garner v. Wolfinbarger, 430 F.2d 1093 (5<sup>th</sup> Cir. 1970). For example, in determining that stockholders could inspect communications between attorney and corporate management under some circumstances, the Garner court stated:

But in assessing management assertions of injury to the corporation it must be borne in mind that management does not manage for itself and that the beneficiaries of its action are the stockholders. Conceptualistic phrases describing the corporation as an entity separate from its stockholders are not useful tools of analysis. They serve only to obscure the fact that management has duties which run to the benefit ultimately of the stockholders.

Id. at 1101.

The Board believes member-owners with a proper purpose should have access to relevant FCU information. Accordingly, and like the OTS Rule, this proposal does not include confidentiality protection for privileged information, but that does not mean that privileged material will automatically be subject to inspection. Privileged material would have to be the subject of a proper petition with a valid purpose; it would have to fall within the scope of "books and records of account" or "minutes;" and it would have to be relevant to the petitioners' stated purpose, all before it would be subject to inspection. Proposed paragraph (f) also provides regional directors with authority to resolve disputes, and a regional director could place conditions on the release of the privileged material where appropriate.

The FCU may have other minutes or books and records of account that it has designated as confidential by policy or otherwise. That designation by an FCU does not defeat the inspection rights of members. If the requested material does not contain confidential information as described in §701.3(d), the member-owners have the right to inspect it upon a proper petition. Again, as discussed below, a regional director may impose conditions on inspection and copying in appropriate cases.

In some cases, materials requested by members may include a mix of both confidential portions and nonconfidential portions. An FCU must make as much of the nonconfidential material available to members as possible, redacting or withholding only the confidential portions.

**(e) Costs.**

Proposed paragraph (e) states that an FCU may charge petitioners the direct and reasonable costs associated with search and duplication but it may not charge for other costs, including indirect costs or attorney's fees.

While the OTS Rule does not specifically address the reimbursement for costs of shareholder inspection and copying of stock savings association records, an OTS legal opinion describes that reimbursement:

In our view, a federal stock association may charge a requesting Qualifying Shareholder reasonable expenses for document searches, duplication, and direct costs associated with producing and delivering documents. However, a requesting Qualifying Shareholder is not obligated to pay the association's attorneys fees in order to gain access to review the association's books and records required to be made available to shareholders under section 552.11.

Letter from Harris Weinstein, OTS Chief Counsel, dated December 5, 1991 (1991 OTS LEXIS 68). The proposed paragraph (e) addresses costs in a manner similar to that described in OTS legal opinions.

Typically, the direct costs of search and duplication would include only the number of hours a clerk might take to locate and duplicate the requested documents multiplied by the clerk's hourly compensation rate, plus the per-page costs of duplication. Requesters need not reimburse the credit union for other costs, including costs associated with the management or supervision of the person(s) conducting the search, costs to review documents, costs associated with in-person inspection of records, overhead costs, or the costs of any legal services.

As noted above, the petition must recognize the obligation of the petitioners as a whole, or certain named petitioners, to pay the direct and reasonable costs associated with search and duplication. Petitioners may also include in the petition, if they want, a maximum amount that they are willing to pay; and the FCU, if it wants, may provide petitioners with an estimate of the search and duplication costs. The rule does not require, however, that petitioners pay in advance, or agree to pay any specific amount, before the FCU provides the petitioners with the requested documents.

**(f) Dispute resolution.**

Proposed paragraph (f) provides, in the event of a dispute between an FCU and its members concerning a petition for inspection or the associated costs, either party may submit the dispute to the regional director. The regional director, after obtaining the views of both parties, will direct the credit union either to withhold the disputed materials or to make them available for member inspection and copying. The regional director may place conditions upon release, if appropriate. Depending on the circumstances, conditions imposed by the regional director might include limitations on making copies or a requirement that the parties enter into a contract restricting the use or further dissemination of the material.

The OTS Rule does not contain a dispute resolution procedure. The NCUA Board believes that a dispute resolution procedure is necessary to protect both the inspection rights of members and the FCU's interests.

In other circumstances involving member disputes with FCUs, NCUA usually refers the dispute to the FCU's supervisory committee for resolution. The proposed rule does not require such referral because, in certain circumstances, such as a pending member vote on a charter or share insurance conversion or a merger, members' need for the information may be time sensitive. Still, in the event of a dispute over access to FCU records, petitioners, if they desire, may contact an FCU's supervisory committee before taking it directly to the regional director. Similarly, if a regional director receives a request from a petitioner for dispute resolution and determines that resolution is not time sensitive, the director may refer the matter to the FCU's supervisory committee for analysis and response before the director makes any decision about the dispute.

The NCUA Board does not believe that specific time frames for regional director action are appropriate. The time needed for dispute resolution could vary significantly from case to case depending on the complexity of the dispute. In addition, the Board does not believe a right to appeal to the Board is necessary.

**C. Request for Public Comment.**

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. The Board requests public comments on whether the proposed rule is understandable and minimally intrusive and also solicits specific suggestions to improve the content of the rule.

#### **D. Regulatory Procedures.**

##### **Regulatory Flexibility Act**

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This proposed rule standardizes and clarifies the rights of members to inspect FCU records. The rule is not a significant departure from existing practice that FCUs must permit inspection under the same terms and conditions that state law requires for shareholders to inspect corporation records. The proposed rule requires that a minimum of one percent of the FCU's members sign a petition to obtain access. In some states, this burden on the members might exceed the burden on shareholders to obtain access and so reduces the likelihood of an FCU having to grant access. Accordingly, the Board does not anticipate that the proposed rule, if adopted, would have a significant economic impact on a substantial number of small credit unions.

##### **Paperwork Reduction Act**

Section 701.3 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), NCUA is submitting a copy of this proposed regulation as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval of a new collection of information.

The proposed rule standardizes and clarifies the circumstances and conditions under which FCU members may inspect and copy an FCU's books, records of accounts, and minutes of meetings. The FCU must permit inspection of relevant records if it receives a member petition stating a proper purpose for inspection and signed by at least one percent of members, with a minimum of five and a maximum of 250.

NCUA does not believe members will use this petition authority often. NCUA estimates that there will be, perhaps, five such petitions per year. NCUA also estimates it will take an FCU that receives a petition approximately 20 hours to evaluate the petition, locate relevant documents, and make them available for inspection and copying. Five petitions times 20 hours per petition equals 100

annual burden hours associated with this proposed collection of information. The Board also notes that the costs of document search and duplication will fall on the petitioners and not on the FCU.

Organizations and individuals that wish to submit comments on this information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Attn: Mark Menchik, Room 10226, New Executive Office Building, Washington, DC 20503, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

The NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulation.

## **Executive Order 13132**

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the

connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

## **The Treasury and General Government Appropriations Act, 1999 - - Assessment of Federal Regulations and Policies on Families**

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

### **List of Subjects**

#### **12 CFR part 701**

Credit unions, records.

By the National Credit Union Administration Board on April 12, 2007.

---

Mary F. Rupp  
Secretary of the Board

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

### **PART 701 – ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS**

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Add §701.3 to read as follows:

§701.3 Member inspection of credit union books, records, and minutes.

(a) *Member inspection rights.* A group of members of a federal credit union has the right, upon submission of a petition to the credit union as described in

paragraph (b) of this section, to inspect and copy nonconfidential portions of the credit union's:

- (1) Books and records of account; and
- (2) Minutes of the proceedings of the credit union's members, board of directors, and committees of directors.

(b) *Petition for inspection.* The petition must describe the particular records to be inspected and state a purpose for the inspection related to the business of the credit union. The petition must state that the petitioners as a whole, or certain named petitioners, agree to pay the direct and reasonable costs associated with search and duplication of requested material. The petition must also state that the inspection is not desired for any purpose in the interest of a business or object other than the business of the credit union; that the members signing the petition have not within five years preceding the signature date sold or offered for sale, and do not now intend to sell or offer for sale, any information obtained from the credit union; and that the members signing the petition have not within the past five years aided or abetted any other person in procuring any information from the credit union for purposes of sale. The petition must name one or more members who will represent the petitioners on issues such as inspection procedures, costs, and potential disputes. At least one percent of the credit union's members, with a minimum of 20 members and a maximum of 250 members, must sign the petition.

(c) *Inspection procedures.* Within 14 days of receipt of a petition, the federal credit union must either allow inspection and copying of all requested material or inform the petitioning members in writing why it is not able to do so. Inspection may be made in person or by agent or attorney and at any reasonable time or times. Member inspection rights under this paragraph are in addition to any other member inspection rights afforded by law, regulation, or the credit union's bylaws.

(d) *Confidential books, records, and minutes.* Members do not have the right to inspect any portion of the books, records, or minutes of a federal credit union if:

- (1) Federal law or regulation prohibits disclosure of that portion,
- (2) The portion contains nonpublic personal information as defined in §716.4 of this part; or
- (3) The portion contains information about credit union employees or officials the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Members may, however, inspect materials describing the compensation and benefits provided by the credit union to its senior executive officers, and the qualifications of the senior executive officers, as that term is defined in §701.14 of this part.

(e) *Costs.* A federal credit union may charge petitioners the direct and reasonable costs associated with search and duplication. The credit union may not charge for other costs, including indirect costs or attorney's fees.

(f) *Dispute resolution.* In the event of a dispute between a federal credit union and its members concerning a petition for inspection or the associated costs, either party may submit the dispute to the regional director. The regional director, after obtaining the views of both parties, will direct the credit union either to withhold the disputed materials or to make them available for member inspection and copying. The regional director may place conditions upon release, if appropriate. The decision of the regional director is a final agency decision and is not appealable to the Board.